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BOOK REVIEWS

TRACTATUS DE BELLO, DE REPRISALIIS ET DE DUELLO, by Giovanni da Legnano, Professor of Civil and Canon Law in the University of Bologna. Edited by Thomas Erskine Holland, with a translation by J. L. Brierly. The Classics of International Law: Carnegie Endowment for International Peace, Division of International Law. New York, Oxford University Press, 1917; pp. xxxviii, 458.

The collaboration in a literary and scholarly enterprise of Mr. Thomas Erskine Holland as editor, Mr. James L. Brierly as translator, and the Oxford University Press as publisher was certain to produce a work of superior merit. They have in all respects outdone themselves in their sumptuous edition of Legnano's TRACTATUS in the Classics of International Law. The volume contains a collotype of an early manuscript, a reproduction of the first edition, a revised Latin text, an English translation by Mr. Brierly, and an excellent biographical and bibliographical introduction by Mr. Holland. The editing has been done throughout with Mr. Holland's characteristic skill and scholarly thoroughness. The present reviewer is not an expert Latinist and is of course incapable of a critical judgment on the merits of the translation. With this much of a confession, it can do no harm to add that he has read the translation carefully and has found it satisfactory in all respects. The press work is beyond praise.

Giovanni da Legnano was a Professor of Civil and Canon Law at the University of Bologna in the latter half of the fourteenth century. In 1360, while a hostile army was preparing to attack the city, he completed his treatise on war, reprisals, and the duel. Legnano's TRACTATUS is now thought to have been the earliest attempt to deal somewhat comprehensively with the rights and duties incident to war between separate states. The greater part of its curious mosaic of material was gleaned from Aristotle, the Bible, the Feudal Constitutions, the Corpus Iuris Civilis, and the Corpus Iuris Canonici, chiefly from the latter. The treatise contains, of course, a great deal that is of no present significance; but its present interest is by no means due entirely to its remoteness from modern conceptions. Legnano anticipated the great publicists of the sixteenth and seventeenth centuries in recognizing the existence of a primitive community of separate States—*Civitates quae non recognoscunt superiorum—qui de facto nullum recognoscunt superiorum*. Again, he was distinctly modern in applying to this primitive community the precepts of the natural law. The natural law, he contended, had been qualified and limited by positive law. He seems to have conceived of the law of nations as essentially positive law. It was founded on natural equity, to be sure, but it was derived from ancient customs, and it controlled the relations of states at war as well as of states at peace. *Nam inter hostes sunt quaedam foeder quae servanda sunt*. It is significant that, although he recurred constantly to natural law and anticipated the anthropomorphic conceits of the later naturalists, Legnano neither assimilated the international community to the state of na-

ture nor identified the law of nature and the law of nations. In this he was more modern than Pufendorf, Thomasius, Burlamaqui, Rutherforth, and many another who lived and wrote from three to four hundred years afterward.

In addition to its rudimentary elucidation of general principles, Legnano's work is interesting for its discussion of particular topics, *e. g.*, the lawful causes of war, the authority by which war may be declared, the distinction between war and reprisal, the distribution of booty, the employment of stratagems, and the treatment of non-combatants and prisoners. He seems to have conceived of war and reprisal as procedural devices for the protection of rights *in extremis*, somewhat analogous to self-help in municipal law. His analysis from this point of view of the nature of reprisal is especially interesting and instructive. Altogether, it is quite surprising that a treatise so replete with matter grotesquely fanciful and obsolete should contain also so much that is relevant in a rudimentary way to the modern law of nations.

It will be generally agreed that Legnano's *TRACTATUS* was entitled to a place in the Classics of International Law. The appearance of this beautiful edition more than ever justifies, if justification were still needed, the original conception of the series and its development to date. The publication of the Classics is a splendid service to scholarship and the better understanding of international questions.

EDWIN D. DICKINSON.